

California Regional Water Quality Control Board
Los Angeles Region

STAFF REPORT

PROPOSED AMENDMENT TO THE *WATER QUALITY CONTROL PLAN – LOS ANGELES REGION* TO INCORPORATE AUTHORIZATION FOR COMPLIANCE SCHEDULES IN NPDES PERMITS

June 8, 2000

I. SUMMARY

An amendment to the Basin Plan is proposed to authorize compliance schedules in National Pollutant Discharge Elimination System (NPDES) permits issued by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board). Specifically, the proposed amendment would allow compliance schedules in NPDES permits for effluent limitations that implement new, revised or newly interpreted water quality standards.¹ The provision would require that compliance be achieved in the shortest practicable period of time, but no longer than five years (maximum life of an NPDES permit) after the adoption or interpretation of applicable standards, with the opportunity during permit revision or reopening to evaluate extending the schedule another five years to a maximum of ten years. The proposed amendment would also allow eligible Time Schedule Orders (TSOs) approved by the Regional Board prior to the effective date of this amendment to be converted to compliance schedules in NPDES permits, if so desired by the Regional Board. For TSO conversions, the permit specified compliance schedule could be no longer than that specified in the existing TSO.

Compliance schedules are a recognized and existing mechanism for ensuring compliance with effluent limitations established to achieve water quality standards adopted by the Regional Water Quality Control Board, State Water Resources Control Board or the U.S. Environmental Protection Agency. This mechanism, which is presently approved for Waste Discharge Requirements (WDRs), has not been approved for use in NPDES permits due to a lack of explicit authorization in the Basin Plan for the Los Angeles Region. In order to expand the options available to the Regional Board in its permitting functions, and to avoid certain unintended consequences to dischargers, staff recommends that an amendment be adopted.

Without this amendment, the Regional Board's only course of action will be to issue an enforcement order (i.e., Time Schedule Order). However, an enforcement order does not waive permit requirements, and recent amendments to California Water Code Section 13385 require that mandatory minimum penalties be assessed for permit violations. Simply put, under the present system, the Regional Board may determine that circumstances justify providing a discharger with a reasonable time frame in which to comply with permit conditions, but be forced to assess penalties during that period.

¹ In federal terminology, water quality objectives and beneficial uses, together with an antidegradation policy, constitute "water quality standards."

Note that other Regional Boards (2, 5 and 8) have taken a similar approach and have adopted specific compliance schedule authorization language in their Basin Plans.²

II. BACKGROUND AND RATIONALE

NPDES permits specify effluent limitations and other provisions that must be achieved to assure compliance with water quality standards for receiving waters. In some cases, immediate compliance with effluent limitations in NPDES permits may be infeasible. In particular, this may be the case if additional management measures must be implemented or physical controls (e.g., treatment facilities) constructed or upgraded in order to meet new, revised or newly interpreted water quality standards. In such situations, it is reasonable to consider a time schedule whereby compliance with the permit limitations is to be achieved.

For example, in the LA Region, there are currently several Time Schedule Orders (TSOs) in force. In issuing these TSOs, the Regional Board acknowledged that immediate compliance with the effluent limitations in the NPDES permits was not feasible and chose to provide the dischargers with a reasonable period of time within which to achieve compliance.

Without language in the Basin Plan allowing for compliance schedules in NPDES permits, the Regional Board's only course of action has been to issue an enforcement order (i.e., Time Schedule Order). However, an enforcement order does not waive permit requirements. Recent amendments to California Water Code Section 13385 require that mandatory minimum penalties be assessed for permit violations. Simply put, under the present system, the Regional Board may determine that circumstances justify providing a discharger with a reasonable time frame in which to comply with permit conditions (as discussed above), but be forced to assess penalties during that period.

In contrast, provided that a discharger acts in conformance with it, a permit-specified compliance schedule would preclude the finding of a permit violation and thereby avoid mandatory minimum penalties. It should be emphasized that this regulatory approach would not preclude public input and participation. Consideration of the terms and conditions of an NPDES permit, including any proposed compliance schedules, must occur at a public hearing. Further, the administrative and judicial remedies afforded under the Water Code remain fully available to those who object to the Regional Board's issuance of such a permit.

III. CONDITIONS FOR USE OF COMPLIANCE SCHEDULES IN NPDES PERMITS

There are three conditions that limit the use of compliance schedules in NPDES permits. **First**, compliance schedules can be included in NPDES permits only when specific authorization to do so is included in the state's water quality standards or the state regulations implementing the standards. That is, authorization must be included in the Basin Plan. This authorization can be provided in a number of ways, including: a) specific compliance schedule authorization language, as proposed here, b) compliance dates incorporated as part of the water quality standards, and c) compliance dates incorporated in the implementation chapters of the Basin Plan (e.g., in Total Maximum Daily Load (TMDL) implementation plans) or statewide plans (e.g.,

² Staff would like to acknowledge the detailed analysis of a similar proposed amendment prepared by Region 8, which has formed the basis for our report.

“Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California”). In the absence of such explicit authorization, compliance schedules must be specified in enforcement orders. **Second**, compliance schedules can only be included in NPDES permits for water quality-based effluent limits, not for technology-based limits.³

Third, compliance schedules can only be included in NPDES permits for effluent limits based on water quality standards adopted, revised or newly interpreted after July 1, 1977.⁴ This condition is based on an order issued by the U.S. Environmental Protection Agency Administrator, *In the Matter of Star-Kist Caribe, Inc.* (NPDES Appeal No. 88-5). The *Star-Kist Caribe* order interprets Clean Water Act Section 301(b)(1)(C), which provides that NPDES permits must require compliance with water quality-based effluent limitations by July 1, 1977. The order states that immediate compliance must be achieved for any water quality standard that was adopted before July 1, 1977 and that has not been revised or newly interpreted after that date, making such water quality standards ineligible for compliance schedules in NPDES permits. A compliance schedule may be included in NPDES permits for water quality standards adopted, revised or newly interpreted after July 1, 1977 if the first two conditions for use of compliance schedules are met.⁵

IV. ANALYSES REQUIRED FOR INCLUSION OF COMPLIANCE SCHEDULES

The essential effect of including a compliance schedule in a permit is to allow a discharger a specific period of noncompliance with an effluent limit that is established to implement a water quality standard.⁶ By including the compliance schedule in the permit, the effective date of the effluent limit is postponed. Pursuant to the California Environmental Quality Act (CEQA), the environmental effects that might result from postponing compliance must be assessed. So, in considering the compliance schedule authorization language, the specific standards (and thus effluent limits) to which it applies must be identified, and CEQA analysis of postponing compliance must be conducted. To facilitate these analyses, and to provide clarity regarding the effective date of the standards, a maximum time frame for any allowable compliance schedule needs to be specified in the authorization language. This provision would allow compliance schedules of up to five years, with the opportunity during permit revision or reopening to

³ Water quality-based effluent limits are those required when technology-based effluent limits fail to attain or maintain acceptable water quality (as measured by water quality standards). (Technology-based limits are derived from promulgated performance standards based on secondary treatment or best practicable control technology.)

⁴ Again, water quality standards are composed of the beneficial uses of a waterbody, water quality objectives or criteria, and the state's antidegradation policy. Therefore, under *Star-Kist Caribe, Inc.* compliance schedules are allowed when water quality objectives or criteria are adopted, revised or newly interpreted **and** when beneficial use designations are changed. For example, a change in the beneficial use designation of a waterbody could result in the application of more stringent water quality objectives to that waterbody. In turn, this would likely result in the application of more stringent effluent limitations to discharges to that waterbody. In this case, a compliance schedule could be considered.

⁵ By “newly interpreted”, we mean the following. Narrative water quality objectives, such as those specified in the Basin Plan for toxic substances, are interpreted by staff using a variety of scientific information to determine the numeric effluent limits necessary to implement these narrative objectives. Effluent limits that are derived based on such a new interpretation of narrative objectives could thus be considered for a permit-specified compliance schedule.

⁶ Alternatively, an enforcement order finds a discharger in violation of the permit for the duration of noncompliance, and subject to further enforcement actions, such as mandatory minimum penalties.

evaluate extending the schedule another five years to a maximum of ten years after the adoption or new interpretation of standards.

It must be emphasized that the inclusion of Basin Plan authorization language is not a guarantee or absolute commitment to grant a compliance schedule in an individual permit. It only provides the Board the flexibility to do so where it is appropriate and justified. Toward that end, when a compliance schedule is proposed to be included in a specific NPDES permit, the discharger must submit certain information to the Regional Board, including:

- Results of diligent efforts to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream.
- Documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established.
- A proposed schedule for additional source control measures or waste treatment.
- The highest discharge quality that can reasonably be achieved until final compliance is attained.
- A demonstration that the proposed schedule is as short as possible, taking into account economic, technical and other relevant factors.

The Regional Board would determine on a case-by-case basis the amount of information and/or analyses needed.

It should also be emphasized that consideration of an NPDES permit, and any compliance schedules proposed for inclusion in that permit, takes place at a public hearing. Thus, the public has the opportunity to comment on permit provisions, including those that would affect compliance with effluent limitations and, thereby, with water quality standards.

V. CONVERTING TIME SCHEDULE ORDERS TO COMPLIANCE SCHEDULES

Currently, there are several Time Schedule Orders (TSOs) in force that have been issued by the Regional Board. The Regional Board's intent in issuing each of these TSOs was to acknowledge that immediate compliance with the effluent limits specified in the NPDES permit was not feasible, and provide a reasonable time frame within which the discharger could achieve compliance with the effluent limits and, thus, water quality standards.

In each case, the Regional Board's only course of action was to issue an enforcement order (i.e., TSO) because the Basin Plan did not have language authorizing compliance schedules in NPDES permits. However, an enforcement order does not waive permit requirements, and recent amendments to California Water Code Section 13385 require that mandatory minimum penalties be assessed for permit violations. Therefore, dischargers with TSOs will be subject to these mandatory minimum penalties unless the TSOs are converted to compliance schedules in NPDES permits.

Staff evaluated each of the existing TSOs to determine compliance schedule eligibility pursuant to *Star-Kist Caribe, Inc.* All of the effluent limits and receiving waters covered under the existing TSOs are eligible for compliance schedules pursuant to *Star-Kist Caribe, Inc.* – that is, there were no water quality standards in place before July 1, 1977 for the effluent limits and receiving waters for which the TSOs were issued.

Staff also assessed the potential environmental effects of converting the existing TSOs to permit-specified compliance schedules, as required by CEQA. Converting the existing TSOs, which were issued by the Regional Board prior to the effective date of the proposed amendment, will not have any environmental effect. This is because the Regional Board has already acknowledged that immediate compliance is not feasible in these circumstances and has taken action to provide the dischargers with time to achieve compliance with the effluent limits in their permits. While the regulatory approach is different, compliance schedules included in the dischargers' NPDES permits will have the same environmental effect as the compliance schedules required in TSOs issued to the dischargers.

For TSO conversions, the permit specified compliance schedule could be no longer than that specified in the existing TSO. In addition, in order for a discharger with a TSO to be eligible for a permit specified compliance schedule in lieu of the TSO, the discharger would be required to provide a status report on actions undertaken to achieve compliance as outlined in the TSO.

VI. ALTERNATIVES

1. No action.

No compliance schedule authorization language would be added to the Basin Plan. If the Regional Board does not revise the Basin Plan to explicitly allow for compliance schedules in NPDES permits, such schedules cannot be included in NPDES permits (with certain exceptions⁷), even where it is infeasible for a discharger to achieve immediate compliance with effluent limits. The result of this alternative would be that dischargers would be in violation of their permits and subject to mandatory minimum penalties, even when the Regional Board finds that immediate compliance is not feasible. Compliance schedules could be specified only in enforcement orders, which may be an inappropriate and counterproductive regulatory approach, and would not protect the discharger from mandatory minimum penalties for permit violations pursuant to California Water Code Section 13385.

2. Adopt language that allows compliance schedules in NPDES permits for all post-1977 and revised pre-1977 water quality standards.

This would require an extensive review of all existing standards to determine which ones are "eligible," that is, which were adopted post-1977, or were adopted prior to 1977 but have since been revised. Once the "eligible" standards have been identified, detailed analyses would be needed to consider the potential adverse environmental effects of postponing compliance (per CEQA requirements).

⁷ A schedule may be included where a compliance schedule is adopted as part of a water quality standard or where the Basin Plan or statewide plan otherwise specifically authorizes a schedule (e.g., an implementation plan for a Total Maximum Daily Load; the "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California").

3a. Adopt language that allows compliance schedules in NPDES permits for all standards, numeric or narrative, that are adopted, revised or newly interpreted after the effective date of this Basin Plan amendment.

Because compliance schedules would only be allowed for effluent limits based on newly adopted, revised or newly interpreted standards (after the effective date of this amendment), no CEQA analysis is necessary at this stage. CEQA analysis would be required when new or revised standards are considered. Therefore, future proposed changes to water quality standards would take into account the potential that a compliance schedule of up to ten years could be specified in an NPDES permit, pursuant to the proposed Basin Plan authorization amendment, if approved.

It should be noted again that there is no guarantee or commitment by the Board to incorporate such schedules. The inclusion of a compliance schedule in a permit would be considered on a case-by-case basis, taking into account the documentation submitted by the discharger to demonstrate that the schedule is justified and as short as possible.

The disadvantage of this alternative is that it limits the compliance schedule authorization to new, revised or newly interpreted standards. This may not allow the Regional Board to address all future compliance problems. However, alternative 3b (discussed below) would allow compliance schedules for existing, eligible TSOs, thus addressing the current compliance problems in the region. Furthermore, should it become necessary to do so, the Regional Board could independently consider a compliance schedule request for an effluent limit necessary to implement a standard not addressed by the recommended alternative (i.e., a standard that was adopted, revised or interpreted before the effective date of the Basin Plan compliance schedule authorization language amendment). In this case, a focused (and therefore less time-consuming) eligibility analysis would be conducted and a Basin Plan amendment to incorporate standard-specific compliance schedule authorization could be considered.

3b. Adopt language that allows eligible Time Schedule Orders issued prior to the effective date of this amendment to be converted to compliance schedules in NPDES permits, if so desired by the Regional Board.

Adopted in conjunction with alternative 3a, this alternative has the advantage of acknowledging previous actions by the Regional Board and allowing the Regional Board to address the known compliance problems in the Region using a tool other than an enforcement action, where appropriate. Furthermore, pursuant to CEQA, this alternative would have no adverse environmental effect, since the discharges in question have already been issued compliance schedules in Time Schedule Orders. For TSO conversions, the permit specified compliance schedule could be no longer than that specified in the existing TSO. While the regulatory tool is different (i.e., a compliance schedule in an NPDES permit versus a compliance schedule in a Time Schedule Order), the environmental effect is the same.

4. Consider different end dates for final compliance.

As already mentioned, an end date for any allowable compliance schedule should be specified to facilitate future CEQA analysis, and to provide clarity regarding the effective date of water quality standards. The period of time to be allowed for compliance may take into account the time needed to determine alternative methods of compliance (such as source reduction) and design and construction of new or improved treatment facilities. Alternative end dates may be

considered as part of any one of the alternatives identified above. The provision for “as short as possible, but no longer than five years with the opportunity during permit revision or reopening to evaluate extending the schedule another five years to a maximum of ten years after the adoption or interpretation of applicable standards” is generally consistent with the compliance schedule policies of other regions and the SWRCB’s “Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California”. Furthermore, this provision and the associated time frame is similar to other policies that have been approved by the U.S. EPA.

This provision does not preclude the possibility of a longer compliance schedule in certain situations (through other Basin Plan provisions). Namely, in the case of TMDLs, the implementation plan (required as part of the TMDL) specifies a schedule to comply with the TMDL. The TMDL and implementation plan are incorporated in the Basin Plan as an amendment to the Plan. Implementation may be achieved in part by establishing and enforcing effluent limits in NPDES permits. Recognizing the difficulties that may attend achieving compliance, the compliance schedule may extend beyond ten years.

VII. RECOMMENDED ALTERNATIVES (3a, 3b)

In summary, staff recommends that the Regional Board adopt language that allows compliance schedules for: 1) effluent limits in NPDES permits that are established to achieve standards adopted, revised or newly interpreted after the effective date of this Basin Plan amendment and 2) effluent limits specified in eligible Time Schedule Orders approved prior to the effective date of this amendment. (As stated earlier, compliance schedules are already allowed in Waste Discharge Requirements that are not adopted as NPDES permits.)

The recommended language requires that compliance schedules be as short as possible, but no longer than five years with the opportunity during permit revision or reopening to evaluate extending the schedule another five years to a maximum of ten years after the adoption or interpretation of applicable standards. For TSO conversions, the permit specified compliance schedule could be no longer than that specified in the existing TSO. It also requires a discharger requesting a compliance schedule in an NPDES permit to document the need for and justify the length of such a schedule. These provisions are consistent with the approach taken by Regional Boards 2, 5 and 8. The proposed language is as follows:

Add to end of Chapter 3, “Water Quality Objectives”, of the *Water Quality Control Plan*:

COMPLIANCE WITH WATER QUALITY OBJECTIVES

“The Regional Board recognizes that immediate compliance with new, revised or newly interpreted water quality standards adopted by the Regional Board, the State Water Resources Control Board, or the U.S. Environmental Protection Agency, may not be feasible in all circumstances. Where the Regional Board determines that it is infeasible for an existing discharger to comply immediately with effluent limitations specified to implement such standards, compliance shall be achieved in the shortest practicable period of time, not to exceed five years after the adoption or interpretation of applicable standards. The Regional Board may elect to evaluate extending the compliance schedule another five years to a maximum of ten years during permit revision or reopening.”

This provision authorizes compliance schedules for standards that are adopted, revised or newly interpreted after the effective date of this amendment (specify effective date here). Furthermore, this provision authorizes permit specified compliance schedules for eligible Time Schedule Orders, which were issued by the Regional Board prior to the effective date of this amendment (specify effective date here). If a Time Schedule Order is converted to a permit specified compliance schedule, the schedule must be no longer than that specified in the existing Time Schedule Order."

Add to Chapter 4, "Strategic Planning and Implementation", of the *Water Quality Control Plan* after section titled "Criteria for WDRs, WRRs, and NPDES Permit Limit and Provisions":

COMPLIANCE SCHEDULES

Where the Regional Board determines that it is infeasible for an existing discharger to achieve immediate compliance with an effluent limitation specified to implement a new, revised or newly interpreted water quality standard, whether numeric or narrative, adopted by the Regional Board, State Water Resources Control Board, or the U.S. Environmental Protection Agency, the Regional Board may establish a compliance schedule in a discharger's Waste Discharge Requirements (NPDES permit). In addition, the Regional Board may convert eligible Time Schedule Orders issued prior to the effective date of this amendment to compliance schedules in NPDES permits.

The compliance schedule shall include a time schedule for completing specific actions (including interim effluent limits) that demonstrate reasonable progress toward attainment of the effluent limitations and, thereby, water quality standards. The schedule shall contain a final compliance date, based on the shortest practicable time (determined by the Regional Board at a public hearing) required to achieve compliance. In no event shall an NPDES permit include a compliance schedule that allows more than five years from the date of adoption or interpretation of the applicable water quality standard. The Regional Board may elect to evaluate extending the compliance schedule another five years to a maximum of ten years during permit revision or reopening. For Time Schedule Orders converted to permit specified compliance schedules, the schedule must be no longer than that specified in the existing Time Schedule Order. Compliance schedules are authorized by this provision only for those effluent limitations that implement water quality standards adopted, revised or newly interpreted after the effective date [date] of this provision and for those effluent limitations specified in eligible Time Schedule Orders issued prior to the effective date of this provision (specify effective date here)."

To document the need for and justify the duration of any such compliance schedule, a discharger must submit the following information, at a minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2) documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established; (3) a proposed

schedule for additional source control measures or waste treatment; (4) the highest discharge quality that can reasonably be achieved until final compliance is attained; and (5) a demonstration that the proposed schedule is as short as possible, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis."

VIII. OTHER CONSIDERATIONS

1. CEQA and Economic Considerations

The Basin Planning process has been certified by the Secretary of Resources as functionally equivalent to the preparation of an Environmental Impact Report (EIR) or Negative Declaration pursuant to CEQA. In lieu of these documents, however, the Regional Board is required to prepare the following: the Basin Plan amendment; an Environmental Checklist that identifies potentially significant adverse environmental impacts of the Basin Plan amendment as required by Title 23 §3777; and a staff report that describes the proposed amendment, reasonable alternatives, and mitigation measures to minimize any significant adverse environmental impacts identified in the Checklist. The Basin Plan amendment, Environmental Checklist, and staff report together are functionally equivalent to an EIR or Negative Declaration.

Based on the Environmental Checklist (see Attachment A), staff concludes that there would be no potentially significant impacts on the environment caused by adoption of this Basin Plan amendment. This amendment allows the Regional Board, in future actions, to include schedules in NPDES permits for compliance with water quality standards that are new, revised or newly interpreted since the effective date of this amendment. Therefore, adoption of this amendment would have no effect on the existing environment and would not require mitigation measures. Furthermore, allowing TSOs, issued prior to the effective date of this proposed amendment, to be converted to compliance schedules in NPDES permits will have no adverse environmental impact, as compliance schedules had previously been approved by the Regional Board for the discharges under the TSOs and permit specified compliance schedules would be no longer than those specified in the existing TSO.

As already noted, CEQA analysis is a requisite part of consideration of new or revised water quality standards.⁸ If this Basin Plan amendment is adopted, then future CEQA analysis of a new or revised water quality standard must take into account the possible environmental effects of allowing a compliance schedule of up to ten years.⁹

⁸ In adopting a new or revised standard, the Regional Board, State Board or U.S. EPA may elect to incorporate a specific compliance schedule that is shorter or longer than that proposed in this provision. In this case, the compliance schedule established as part of the standard would determine the maximum length of a compliance schedule that could be included in an NPDES permit. A discharger requesting a permit compliance schedule for such a standard would have to document the need for and justify the length of the schedule, as discussed previously.

⁹ It may be noted that, as a practical matter, including a compliance schedule in a permit pursuant to the terms of the proposed amendment should not have any environmental effect. This amendment would allow a compliance schedule of the shortest possible duration and **only** if it is shown to be necessary, i.e., the discharger cannot comply immediately. In such circumstances, a compliance schedule, included either in an enforcement order or, if this amendment is approved, in an NPDES permit, would be

Finally, the adoption of this amendment will not result in any additional financial burden for dischargers.

2. Relationship of Amendment to Schedules Established in Total Maximum Daily Loads (TMDLs)

The Regional Board has adopted and will be considering a number of TMDLs to address water quality impairments identified on the Clean Water Act Section 303(d) list. As required by the Act, each TMDL must assure compliance with water quality standards. Each TMDL allocates the total allowable load of the problem pollutant to the affected receiving water among the various sources of the pollutant, including point and nonpoint source discharges.

Each TMDL includes a plan whereby the TMDL is to be implemented. Implementation may be achieved, in part, by establishing and enforcing effluent limits in NPDES permits. The implementation plan specifies a schedule for compliance with the TMDL. Recognizing the difficulties that may attend achieving compliance, compliance schedules may extend beyond ten years. Each TMDL is incorporated in the Basin Plan as an amendment to the Plan. As a part of the Basin Plan, the TMDL and its schedule provisions must be implemented in NPDES permits. Thus, pursuant to the terms of a TMDL, a compliance schedule in an NPDES permit could be longer than ten years.¹⁰

This does not conflict with the regulatory approach proposed in this amendment, which calls for compliance with effluent limitations implementing new, revised or newly interpreted standards no later than ten years from the adoption or interpretation of the standards. In adopting a TMDL to address a specific pollutant, including the implementation plan and schedule, the Board conducts a focused analysis of the complexity of the pollutant problem and the feasibility of compliance. The schedule in a TMDL reflects the Board's determination (with full opportunity for public participation) of what is reasonable for that pollutant. This compliance schedule determination is apart from, and would supercede, the compliance schedule provisions proposed in this amendment.

necessary. While the regulatory approach is different, there would be no difference in environmental effect.

¹⁰ The approach taken in the TMDLs is comparable to that proposed in this amendment. The TMDLs call for compliance **as soon as possible**, but no later than the specified date. If a compliance schedule for a specific effluent limitation is included in an NPDES permit, both the final compliance date and interim effluent limitations, if appropriate, would be specified.

3. Relationship of Amendment to Schedules Established by the California Toxics Rule (CTR) and “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Phase 1 of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan)”

Recently, the U.S. Environmental Protection Agency promulgated new objectives for toxic substances. (The objectives are delineated in the U.S. EPA's California Toxics Rule, or CTR). The rule includes provisions authorizing compliance schedules of up to five years in NPDES permits held by existing dischargers. On March 2, 2000, the State Water Resources Control Board adopted a policy for implementation of the CTR objectives (“Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Phase 1 of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan)”). This policy also includes specific authorization language needed to allow Regional Boards to include compliance schedules in NPDES permits for effluent limitations established to meet CTR objectives. Specifically, the policy allows up to five years from the date of permit issuance, reissuance or modification to comply with effluent limitations based on CTR objectives with or without a TMDL, and up to fifteen years from the effective date of the policy to develop and adopt a TMDL. The policy further specifies that in no case shall a compliance schedule exceed, from the effective date of this policy: a) ten years to establish and comply with effluent limitations based on CTR objectives or b) twenty years to develop and adopt a TMDL and establish and comply with wasteload allocations (WLAs)¹¹ derived from a TMDL for a CTR objective.¹² This policy has been approved by OAL and is now a part of the Region's Basin Plan; therefore, the Regional Board will implement its compliance schedule provisions for the CTR objectives. In short, no action by the Regional Board to incorporate compliance schedule language applicable to CTR objectives appears necessary.

IX. RECOMMENDATION

Staff recommends that the Regional Board adopt Board Resolution 00-xx (see Attachment B), approving the proposed Basin Plan amendment to include language authorizing (1) compliance schedules of up to five years, with the opportunity during permit revision or reopening to evaluate extending the schedule another five years to a maximum of ten years, in NPDES permits for effluent limits necessary to implement water quality standards that are adopted, revised or newly interpreted after the effective date of this Basin Plan amendment, and (2) permit specified compliance schedules for eligible effluent limits specified in TSOs issued prior to the effective date of the amendment, with the caveat that the schedule may be no longer than that specified in the existing TSO.

¹¹ A wasteload allocation (WLA) is the amount of a pollutant load that is allocated to a specific point source as part of the TMDL. The WLA is implemented via appropriate effluent limits in the point source discharger's permit.

¹² That is, a compliance schedule could allow up to 15 years to complete the TMDL and up to 5 years to comply with the TMDL-derived effluent limitation.

ATTACHMENT A
CEQA ENVIRONMENTAL CHECKLIST

CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the Regional Board) is the Lead Agency for evaluating the environmental impacts of the proposed amendment to the *Water Quality Control Plan for the Los Angeles Region (Basin Plan)*, to incorporate authorization for compliance schedules in NPDES permits. The Secretary of Resources has certified the basin planning process as exempt from certain requirements under the California Environmental Quality Act (CEQA), including preparation of an initial study, a negative declaration and environmental impact report (Title 14, California Code of Regulations, Section 15251). As this proposed amendment to the *Basin Plan* is part of the basin planning process, the amendment is considered 'functionally equivalent' to an initial study, negative declaration, and environmental impact report.

Any regulatory program of the Regional Board certified as functionally equivalent, however, must satisfy the documentation requirements of Title 23, California Code of Regulations, Section 3777(a), which requires the following:

- An Environmental Checklist with a description of the proposed activity
- A Determination with respect to significant environmental impacts

This information is presented below.

I. Description of Proposed Activity

The Water Quality Control Plan for the Los Angeles Region (also known as the Basin Plan) designates beneficial uses of waterbodies, establishes water quality objectives for the protection of these beneficial uses, and outlines a plan of implementation for maintaining and enhancing water quality. One of the tools available for maintaining and enhancing water quality are NPDES permits. NPDES permits specify effluent limitations and other provisions that must be achieved to assure compliance with the water quality standards of receiving waters. In some cases, immediate compliance with the effluent limitations in NPDES permits may be infeasible. Therefore, an amendment to the Basin Plan is proposed to authorize compliance schedules in NPDES permits. Specifically, the proposed amendment would allow compliance schedules in NPDES permits for effluent limitations that implement new, revised or newly interpreted water quality standards. The amendment would require that compliance be achieved in the shortest practicable period of time, not to exceed five years after the adoption or interpretation of applicable standards. The Regional Board may elect to evaluate extending the compliance schedule another five years to a maximum of ten years after the adoption or new interpretation of applicable standards during permit revision or reopening. The proposal would also allow existing TSOs, where eligible, to be converted to compliance schedules in NPDES permits, if so desired by the Regional Board. If converted, the permit specified compliance schedule would be no longer than the schedule specified in the existing TSO.

II. ENVIRONMENTAL IMPACTS

Environmental Impacts
YES MAYBE NO

1. Earth. Will the proposal result in:

- | | | |
|----|--|----|
| a. | Unstable earth conditions or in changes in geologic substructures? | NO |
| b. | Disruptions, displacements, compaction or overcoming of the soil? | NO |
| c. | Change in topography or ground surface relief features? | NO |
| d. | The destruction, covering or modification of any unique geologic or physical features? | NO |
| e. | Any increase in wind or water erosion of soils, either on or off the site? | NO |
| f. | Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake? | NO |
| g. | Exposure of people or property to geologic hazards, such as earthquakes, landslides, mudslides, ground failure, or similar hazards? | NO |

2. Air. Will the proposal result in:

- | | | |
|----|--|----|
| a. | Substantial air emissions or deterioration of ambient air quality? | NO |
| b. | The creation of objectionable odors? | NO |
| c. | Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally? | NO |

3. Water. Will the proposal result in:

- | | | |
|----|---|-------|
| a. | Changes in currents, or the course of direction or water movements, | |
| b. | in either marine or fresh waters? | NO |
| c. | Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff? | NO |
| d. | Alterations to the course of flow of flood waters? | NO |
| e. | Change in the amount of surface water in any water body? | NO |
| f. | Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen, or turbidity? | MAYBE |

		Environmental Impacts		
		YES	MAYBE	NO
g.	Alteration of the direction or rate of flow of ground waters?			NO
h.	Change in the quantity or quality of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?		MAYBE	
i.	Substantial reduction in the amount of water otherwise available for public water supplies?			NO
j.	Exposure of people or property to water related hazards such as flooding or tidal waves?			NO
4. Plant Life. Will the proposal result in:				
a.	Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, microflora and aquatic plants)?			NO
b.	Reduction of the numbers of any unique, rare or endangered species of plants?			NO
c.	Introduction of new species of plants into an area, or result in a barrier to the normal replenishment of existing species?			NO
d.	Reduction in acreage of any agricultural crop?			NO
5. Animal Life. Will the proposal result in:				
a.	Change in the diversity of species, or numbers of any species of animals (birds; land animals, including reptiles; fish and shellfish, benthic organisms, insects or microfauna)?			NO
b.	Reduction of the numbers of any unique, rare or endangered species of animals?			NO
c.	Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?			NO
d.	Deterioration to existing fish or wildlife habitat?			NO
6. Noise. Will the proposal result in:				
a.	Increases in existing noise levels?			NO
b.	Exposure of people to severe noise levels?			NO

Environmental Impacts
 YES MAYBE NO

7. Light and Glare. Will the proposal:

- | | | |
|----|------------------------------|----|
| a. | Produce new light and glare? | NO |
|----|------------------------------|----|

8. Land Use. Will the proposal result in:

- | | | |
|----|---|----|
| a. | Substantial alteration of the present or planned land use of an area? | NO |
|----|---|----|

9. Natural Resources. Will the proposal result in:

- | | | |
|----|---|----|
| a. | Increase in the rate of use of any natural resources? | NO |
| b. | Substantial depletion of any nonrenewable natural resource? | NO |

10. Risk of Upset. Will the proposal involve:

- | | | |
|----|---|----|
| a. | A risk of an explosion or the release of hazardous substances (including, but not limited to: oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions? | NO |
| b. | Possible interference with an emergency response plan or an emergency evacuation plan? | NO |

11. Population. Will the proposal:

- | | | |
|----|---|----|
| a. | Alter the location, distribution, density, or growth rate of the human population of an area? | NO |
|----|---|----|

12. Housing. Will the proposal:

- | | | |
|----|---|----|
| a. | Affect existing housing, or create a demand for additional housing? | NO |
|----|---|----|

13. Transportation/Circulation. Will the proposal result in:

- | | | |
|----|--|----|
| a. | Generation of substantial additional vehicular movement? | NO |
| b. | Effects on existing parking facilities, or demand for new parking? | NO |
| c. | Substantial impact upon existing transportation systems? | NO |
| d. | Alterations to present patterns of circulation or movement of people and/or goods? | NO |
| e. | Alterations to waterborne, rail or air traffic? | NO |
| f. | Increase in traffic hazards to motor vehicles, bicyclists or pedestrians? | NO |

Environmental Impacts
 YES MAYBE NO

14. Public Service. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:

- | | | |
|----|--|----|
| a. | Fire protection? | NO |
| b. | Police protection? | NO |
| c. | Schools? | NO |
| d. | Parks or other recreational facilities? | NO |
| e. | Maintenance of public facilities, including roads? | NO |
| f. | Other governmental services? | NO |

15. Energy. Will the proposal result in:

- | | | |
|----|--|----|
| a. | Use of substantial amounts of fuel or energy? | NO |
| b. | Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy? | NO |

16. Utilities and Service Systems. Will the proposal result in a need for new systems, or substantial alterations to the following utilities?

- | | | |
|----|---------------------------|----|
| a. | Power or natural gas? | NO |
| b. | Communications systems? | NO |
| c. | Water? | NO |
| d. | Sewer or septic tanks? | NO |
| e. | Storm water drainage? | NO |
| f. | Solid waste and disposal? | NO |

17. Human Health. Will the proposal result in:

- | | | |
|----|--|----|
| a. | Creation of any real or potential health hazard (excluding mental health)? | NO |
| b. | Exposure of people to potential health hazards? | NO |

18. Aesthetic. Will the proposal result in:

- | | | |
|----|---|----|
| a. | The obstruction of any scenic vista or view open to the public? | NO |
|----|---|----|

		Environmental Impacts	
		YES MAYBE	NO
b.	The creation of an aesthetically offensive site open to public view?		NO
19. Recreation. Will the proposal result in:			
a.	Impact upon the quality or quantity of existing recreational opportunities?		NO
20. Cultural Resources. Will the proposal:			
a.	Result in the alteration of or the destruction of a prehistoric or historic archaeological site?		NO
b.	Result in adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object?		NO
c.	Have the potential to cause a physical change which would affect unique ethnic cultural values?		NO
d.	Restrict existing religious or sacred uses within the potential impact area?		NO
21. Public Opinion.			
a.	Is there, or is there anticipated to be, a substantial body of opinion that the proposed project may have an adverse effect on environment?		NO
22. Authorization by Other Public Agencies.			
a.	Will this project require certification, authorization, or issuance of a permit by any other local, state or federal agency? (A "YES" or "MAYBE" answer will require consultation with the appropriate agency.)		NO
23. City Plans and Goals, etc.			
a.	Is the project incompatible with existing zoning, plans and goals that have been adopted by the City for the area in which the project is located?		NO
Mandatory Findings of Significance.			
Potential to degrade: Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			NO

Environmental Impacts
YES MAYBE NO

Short-term: Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time, while long-term impacts will endure well into the future.)

NO

Cumulative: Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)

NO

Substantial adverse: Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

NO

III. EVALUATION OF ENVIRONMENTAL IMPACTS.

Expand on all "YES" and "MAYBE" answers given to the preceding questions in regard to environmental impacts. The evaluation shall consider whether the environmental impact indicated will have a substantial, adverse change in any of the physical conditions within the area affected by the activity. In addition, the evaluation should discuss environmental effects in proportion to their severity and probability of occurrence. (Use additional pages if necessary.)

3(f) and 3(h) The proposal may result in an alteration of surface or ground water quality because without the proposed compliance schedule provision, dischargers may have a greater incentive to achieve compliance sooner than with this provision, particularly given the recent amendments to the California Water Code Section 13385 requiring that mandatory minimum penalties be assessed for permit violations. However, the Basin Plan amendment clearly states that compliance schedules will only be allowed if immediate compliance cannot be achieved, and that compliance must be achieved in the shortest time possible.

IV. DETERMINATION

On the basis of this initial evaluation:

☒ I find the proposed Basin Plan amendment could not have a significant effect on the environment.

☐ I find that the proposed Basin Plan amendment could have a significant adverse effect on the environment. However, there are feasible alternatives and/or feasible mitigation measures that would substantially lessen any significant adverse impact. These alternatives are discussed in the attached written report.

☐ I find the proposed Basin Plan amendment may have a significant effect on the environment. There are no feasible alternatives and/or feasible mitigation measures available which would substantially lessen any significant adverse impacts. See the attached written report for a discussion of this determination.

DATE:

Dennis A. Dickerson
Executive Officer

Date

ATTACHMENT B
TENTATIVE BOARD RESOLUTION

**California Regional Water Quality Control Board
Los Angeles Region**

DRAFT RESOLUTION NO. 00-xx

**Draft Resolution Amending the Water Quality Control Plan
for the Los Angeles Region to Incorporate Language Authorizing Compliance Schedules
in NPDES Permits**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board), finds that:

1. An updated Water Quality Control Plan for the Los Angeles Region (Basin Plan) was adopted by the Regional Board on June 13, 1994, approved by the State Water Resources Control Board (SWRCB) on November 17, 1994, and approved by the Office of Administrative Law (OAL) on February 23, 1995.
2. National Pollutant Discharge Elimination System (NPDES) permits are issued for discharges of waste to surface waters pursuant to the federal Clean Water Act. Pursuant to authority provided by the California Water Code (Sections 13370 et seq.), the Regional Board issues NPDES permits in lieu of direct regulation of surface water waste discharges by the U.S. Environmental Protection Agency (EPA).
3. NPDES permits specify effluent limitations and other provisions that must be achieved to assure compliance with the water quality standards of the affected receiving waters. In some cases, immediate compliance with the effluent limitations in NPDES permits may be infeasible.
4. When immediate compliance with effluent limitations cannot be achieved because the discharger has not acted responsibly, an enforcement order to compel compliance with the effluent limitations is appropriate. An enforcement order results from a finding of permit violation. Permit violations subject the discharger to mandatory minimum penalties pursuant to Water Code Section 13385, and to citizen suits pursuant to Section 505 of the Clean Water Act.
5. In some circumstances, existing dischargers may be unable to comply immediately with effluent limitations based on new, revised or newly interpreted water quality standards adopted by the Regional Board, SWRCB or EPA through no fault of their own. In these cases, it is reasonable and appropriate to include a schedule for compliance in the NPDES permit. Provided that the discharger acts in conformance with the permit-specified schedule, then the discharger would have time to come into compliance without a finding of permit violation. This would prevent the unintended and unreasonable consequence of subjecting the discharger to mandatory minimum penalties.
6. Furthermore, there have been several circumstances in which the Regional Board deemed that immediate compliance with permit-specified effluent limits was not feasible. For these dischargers, the Regional Board's only course of action was to issue a Time Schedule Order, since the Basin Plan did not explicitly authorize compliance schedules in NPDES permits.

7. An order by the U.S. Environmental Protection Agency Administrator (*In the Matter of Star-Kist Caribe, Inc.* (NPDES Appeal No. 88-5)) defines the constraints on the inclusion of compliance schedules in NPDES permits. Schedules of compliance can be included in permits for those effluent limits that implement new (adopted after July 1, 1977), revised pre-1977 or newly interpreted water quality standards, if explicit authorization for such schedules is included in the Basin Plan.
8. With certain exceptions, the Basin Plan does not include explicit authorization for compliance schedules in NPDES permits.
9. To assure water quality and beneficial use protection in a reasonable and fair manner, it is appropriate to amend the Basin Plan to incorporate language authorizing the inclusion of compliance schedules in NPDES permits under certain circumstances.
10. The Regional Board prepared and distributed written reports (staff reports) regarding adoption of the Basin Plan amendment in accordance with applicable state and federal environmental regulations (California Code of Regulations, Section 3775, Title 23, and 40 CFR Parts 25 and 131).
11. The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration. The Basin Plan amendment package includes staff reports, an Environmental Checklist, an assessment of the potential environmental impacts of the Basin Plan amendment, and a discussion of alternatives. The Basin Plan amendment, Environmental Checklist, staff reports, and supporting documentation are functionally equivalent to an Environmental Impact Report or Negative Declaration.
12. On July 27, 2000, the Regional Board held a Public Hearing to consider the Basin Plan amendment. Notice of the Public Hearing was given to all interested persons and published in accordance with California Water Code Section 13244.
13. The Basin Plan amendment must be submitted for review and approval by the SWRCB, OAL and EPA. Once approved by the SWRCB, the amendment is submitted to OAL and EPA. The Basin Plan amendment will become effective upon approval by OAL and EPA. A Notice of Decision will be filed.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Regional Board adopts the amendment to the Water Quality Control Plan for the Los Angeles Region (Region 4) as set forth in the attachment.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirement of Section 13245 of the California Water Code.
3. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of Sections 13245 and 13246 of the California Water

Code and forward it to the Office of Administrative Law and the U.S. Environmental Protection Agency for approval.

I, Dennis Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on July 27, 2000.

Date

Dennis Dickerson
Executive Officer

ATTACHMENT TO RESOLUTION 00-XX

**BASIN PLAN AMENDMENT: LANGUAGE AUTHORIZING THE INCLUSION OF
COMPLIANCE SCHEDULES IN NPDES PERMITS**

(to be added to the *Water Quality Control Board, Los Angeles Region*, Chapters 3 and 4)

Add to end of Chapter 3, "Water Quality Objectives", of the *Water Quality Control Plan*:

COMPLIANCE WITH WATER QUALITY OBJECTIVES

"The Regional Board recognizes that immediate compliance with new, revised or newly interpreted water quality standards adopted by the Regional Board, the State Water Resources Control Board, or the U.S. Environmental Protection Agency, may not be feasible in all circumstances. Where the Regional Board determines that it is infeasible for an existing discharger to comply immediately with effluent limitations specified to implement such standards, compliance shall be achieved in the shortest practicable period of time, not to exceed five years after the adoption or interpretation of applicable standards. The Regional Board may elect to evaluate extending the compliance schedule another five years to a maximum of ten years during permit revision or reopening.

This provision authorizes compliance schedules for standards that are adopted, revised or newly interpreted after the effective date of this amendment (specify effective date here). Furthermore, this provision authorizes permit specified compliance schedules for eligible Time Schedule Orders, which were issued by the Regional Board prior to the effective date of this amendment (specify effective date here). If a Time Schedule Order is converted to a permit specified compliance schedule, the schedule must be no longer than that specified in the existing Time Schedule Order."

Add to Chapter 4, "Strategic Planning and Implementation", of the *Water Quality Control Plan* after section titled "Criteria for WDRs, WRRs, and NPDES Permit Limit and Provisions":

COMPLIANCE SCHEDULES

Where the Regional Board determines that it is infeasible for an existing discharger to achieve immediate compliance with an effluent limitation specified to implement a new, revised or newly interpreted water quality standard, whether numeric or narrative, adopted by the Regional Board, State Water Resources Control Board, or the U.S. Environmental Protection Agency, the Regional Board may establish a compliance schedule in a discharger's Waste Discharge Requirements (NPDES permit). In addition, the Regional Board may convert eligible Time Schedule Orders issued prior to the effective date of this amendment to compliance schedules in NPDES permits.

The compliance schedule shall include a time schedule for completing specific actions (including interim effluent limits) that demonstrate reasonable progress toward attainment of the effluent limitations and, thereby, water quality standards. The schedule shall contain a final compliance date, based on the shortest practicable time (determined by the Regional Board at a public hearing) required to achieve compliance. In no event shall an NPDES permit include a compliance schedule that allows more than five years from the date of adoption or interpretation of the applicable water quality standard. The Regional Board may elect to evaluate extending the compliance schedule another five years to a maximum of ten years during permit revision or reopening. For Time Schedule

Orders converted to permit specified compliance schedules, the schedule must be no longer than that specified in the existing Time Schedule Order. Compliance schedules are authorized by this provision only for those effluent limitations that implement water quality standards adopted, revised or newly interpreted after the effective date [date] of this provision and for those effluent limitations specified in eligible Time Schedule Orders issued prior to the effective date of this provision (specify effective date here)."

To document the need for and justify the duration of any such compliance schedule, a discharger must submit the following information, at a minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2) documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established; (3) a proposed schedule for additional source control measures or waste treatment; (4) the highest discharge quality that can reasonably be achieved until final compliance is attained; and (5) a demonstration that the proposed schedule is as short as possible, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis."